Commonwealth v. *Jones*, 10 Bush. (Ky.) 725; *Ex parte Lange*, 18 Wall. (U. S.) 163, 168, 169. But *cf. State* v. *Jones*, 82 N. C. 685.

EMINENT DOMAIN — COMPENSATION — WATERWAY CONSTRUCTED BY CITY THROUGH RAILWAY'S RIGHT OF WAY NECESSITATING STRUCTURAL CHANGES. — A city constructed a canal, with walks on either side, through the right of way of a railroad, in order to join certain lakes used for recreation purposes by its inhabitants. This made it necessary for the railroad to build a bridge. *Held*, that the railroad is entitled to compensation for the value of the land taken but not for the cost of building and maintaining the bridge. *Chicago, M. & St. P. Ry. Co.* v. *City of Minneapolis*, 34 Sup. Ct. 400.

For a discussion of the distinction between taking property under the eminent domain power and under the police power, see NOTES, p. 664.

EQUITY — JURISDICTION — RIGHT TO ENJOIN A THREATENED CRIMINAL PROSECUTION AGAINST A THIRD PARTY. — A statute forbade the shipment by any one, or the receipt for shipment by carriers, of unpasteurized cream to be carried more than sixty-five miles. The business of the complainant, a dairy company, which depended on the receipt of cream from farmers more than sixty-five miles distant, was thereby being ruined because the farmers and railroad company were afraid to ship. Plaintiff, on the ground that the statute was unconstitutional, sought to enjoin the railroad from refusing to accept goods consigned to him, and also to restrain the Attorney-General from prosecuting for breach of the statute. *Held*, that equity will not enjoin a criminal proceeding directed against a party other than the petitioner, nor will the railroad company be enjoined from refusing to accept goods offered. *Milton Dairy Co.* v. *Great Northern Ry. Co.*, 144 N. W. 764 (Minn.).

Whether the court should have refused to grant an injunction against the railroad is not entirely free from doubt. It is usually held that a railroad cannot justify a refusal to serve by pleading an unconstitutional statute. *Southern Express Co.* v. *Rose*, 124 Ga. 581, 53 S. E. 185. It may be contended therefore that the railroad, in signifying its unwillingness to receive shipments, was threatening torts involving irreparable injury to the plaintiff, and should be enjoined. However that may be, the court squarely held that, whether or no the statute was constitutional, it would not restrain the Attorney-General from prosecuting the shippers and the railroad unless the injunction was demanded by the persons threatened with prosecution. For a discussion of whether irreparable damage to one's business relations gives a right to enjoin the prosecution of someone else under an unconstitutional statute, see NOTES, p. 668.

EVIDENCE — GENERAL PRINCIPLES AND RULES OF EXCLUSION — REPAIRS AFTER INJURY AS PROOF OF CAUSATION AND POSSIBILITY OF PREVENTION. — The defendant operated an irrigation canal across the plaintiff's land. To show that his orchard was injured by an enlargement of the canal, and that the seepage could have been prevented by cementing the sides, the plaintiff offered evidence of subsequent repairs which had stopped the damage. *Held*, that the evidence is admissible. *Jensen* v. *Davis and Weber, etc. Co.*, 137 Pac. 635 (Utah).

It is quite well settled that evidence of subsequent repairs cannot be used to show negligence. It is irrelevant, inasmuch as taking precautions for the future is not an admission of culpability in the past; and its admission is against public policy in that it would deter owners from remedying defects. *Aldrich* v. *Concord & M. R. R.*, 67 N. H. 250, 29 Atl. 408. In the principal case the evidence is relevant on both the issues for which it was offered. Proof that the damage began and ended with the uncemented condition of the canal is convincing both as to causation and as to whether there was a practicable